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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF:

FMC CORPORATION FACILITY  
FRESNO, CALIFORNIA

FMC Corporation

Respondent

Proceeding under Section 122(h)(1)  
of the Comprehensive Environmental  
Response, Compensation, and  
Liability Act, as amended,  
42 U.S.C. § 9622(h)(1).

U.S. EPA Docket No. 95-12

ADMINISTRATIVE CONSENT ORDER

I. Statement of Jurisdiction and Purpose

A. This Administrative Consent Order ("Order") is made and entered into by the United States Environmental Protection Agency ("EPA") and FMC Corporation ("FMC"). The purpose of this Order is: 1) to provide reimbursement to EPA for past response costs incurred at or in connection with the FMC Corporation facility ("Site") in Fresno, California; 2) to resolve EPA's claims against FMC for such response costs; and 3) to terminate the Administrative Order on Consent between EPA and FMC, U.S. EPA Docket No. 86-12.

B. EPA is authorized to enter into this Consent Order pursuant to the authority vested in the EPA Administrator by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"),

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1 42 U.S.C. § 9622(h)(1), which authority has been delegated to the  
2 Regional Administrators of EPA by EPA Delegation No. 14-14-D  
3 (Sept. 13, 1987), and redelegated to the Director, Hazardous  
4 Waste Management Division, EPA Region IX.

5 C. EPA is authorized to enter into Section V of this Order,  
6 pertaining to Administrative Order on Consent No. 86-12, pursuant  
7 to the authority vested in the President of the United States by  
8 Sections 104, 106 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, and  
9 9622. This authority has been delegated by the President to the  
10 Administrator of EPA on January 23, 1987 by Executive Order  
11 12580, 52 Fed. Reg. 2923, and further delegated to the Assistant  
12 Administrator for Solid Waste and Emergency Response and the  
13 Regional Administrator, EPA Region IX, by EPA Delegation Nos.  
14 14-8-A and 14-14-C. This authority has been redelegated to the  
15 Director, Hazardous Waste Management Division, EPA Region IX.

16 D. This Order shall be binding upon EPA and FMC and its  
17 successors and assigns. Each signatory to this Order represents  
18 that he or she is fully authorized to enter into the terms and  
19 conditions of this Order and to legally bind the party  
20 represented by him or her. EPA and FMC agree to undertake all  
21 actions required of them by this Order.

22 E. FMC consents to and agrees not to contest EPA's  
23 jurisdiction or authority to enter into this Order or to  
24 implement or enforce its terms.

## 25 II. Background

26 A. In October 1984, EPA proposed the Site for inclusion  
27 on the National Priorities List ("NPL") as defined in Section 105  
28 of CERCLA, 42 U.S.C. § 9605.

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1 B. EPA and FMC entered into an Administrative Order on  
2 Consent, EPA Docket No. 86-12, effective December 20, 1986  
3 whereby FMC agreed (among other things) to conduct a Remedial  
4 Investigation and Feasibility Study ("RI/FS") at the Site and to  
5 reimburse EPA for response and oversight costs incurred by EPA,  
6 both prior to and pursuant to the Consent Order, with respect to  
7 the Site and Consent Order, respectively.

8 C. On October 4, 1989, EPA removed the Site from the  
9 proposed NPL based on the Site being subject to the Subtitle C  
10 corrective action authorities of the Resource Conservation and  
11 Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq. See EPA's NPL  
12 listing Policy for sites regulated under RCRA, 51 Fed.Reg. 21054  
13 (June 10, 1986); amended at 53 Fed.Reg. 23978 (June 24, 1988).

14 D. Notwithstanding the removal of the Site from the  
15 proposed NPL, Administrative Order 86-12 remained in place and  
16 the tasks required in that Order were completed. EPA approved  
17 the Remedial Investigation Report on August 24, 1990 and approved  
18 the Feasibility Study Report on May 21, 1991. EPA issued the  
19 Record of Decision ("ROD") for the Site on June 28, 1991.

20 E. Subsequently, EPA and the California Department of Toxic  
21 Substances Control ("DTSC") mutually agreed to transfer lead  
22 agency responsibility for the Site to DTSC.

23 F. Effective August 17, 1992, FMC entered into a Consent  
24 Order with DTSC, Docket No. I&S 92/93-001, whereby FMC agreed  
25 (among other things) to conduct remedial actions at the Site in  
26 accordance with the remedy selected in the EPA ROD.

1 G. EPA has incurred response costs with respect to the Site  
2 in the amount of at least \$1,065,107.77, and has made formal  
3 requests to FMC for payment of these costs.

4 H. FMC has paid all those costs. As of November 22, 1988,  
5 FMC had reimbursed EPA for \$295,836.52. By letter dated June 13,  
6 1991, FMC reimbursed EPA \$535,917.70 for such costs. By letter  
7 dated September 24, 1992, FMC reimbursed EPA \$216,169.27 for such  
8 costs. By letter dated December 7, 1992, FMC reimbursed EPA  
9 \$17,184.28 for such costs.

10 III. Conclusions of Law

11 EPA alleges that:

12 A. The Site is a "facility" as defined in Section 101(9) of  
13 CERCLA, 42 U.S.C. § 9601(9);

14 B. Hazardous substances, as defined in Section 101(14) of  
15 CERCLA, 42 U.S.C. § 9601(14), are present at the Site and have  
16 been or are threatened to be released into the environment at or  
17 from the Site;

18 C. Such releases or threatened releases required response  
19 action to be undertaken at the Site pursuant to Section 104 of  
20 CERCLA, 42 U.S.C. § 9604;

21 D. EPA is entitled to seek recovery from responsible  
22 parties for response costs, including interest, incurred with  
23 respect to a facility or in connection with releases of hazardous  
24 substances, pursuant to Section 107(a) of CERCLA, 42 U.S.C.  
25 § 9607(a);

26 E. FMC is a responsible party under Section 107(a) of  
27 CERCLA, 42 U.S.C. § 9607(a), and is liable for EPA response costs  
28 incurred at or in connection with the Site.

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1 IV. Agreement

2 A. Within sixty (60) days after the effective date of this  
3 Order, EPA shall provide to FMC a summary of all additional costs  
4 incurred (exclusive of the \$1,065,107.77 described above) through  
5 the effective date of this Order, including but not limited to  
6 accrued interest on those additional costs pursuant to Section  
7 107(a) of CERCLA, 42 U.S.C. § 9607(a). At the time of execution  
8 of this Order by FMC, EPA will provide an estimate of the amount  
9 of such additional costs, including any accrued interest on these  
10 additional costs.

11 B. FMC agrees to pay the Hazardous Substance Superfund the  
12 amount of costs set forth in the cost summary provided by EPA  
13 pursuant to paragraph IV.A above, within sixty (60) days of FMC's  
14 receipt of said cost summary, provided that the amount in this  
15 summary is consistent with the estimate provided by EPA to FMC at  
16 the time FMC executes this Order, as described in Paragraph IV.A  
17 above.

18 C. The payment described in paragraph IV.B above shall be  
19 made by certified or cashier's check made payable to "EPA-  
20 Hazardous Substance Superfund." The check shall specifically  
21 reference the FMC Site and shall be sent by certified mail,  
22 return receipt requested, to:

23 EPA - Region IX  
24 ATTN: Superfund Accounting  
25 P.O. Box 360863M  
26 Pittsburgh, Pennsylvania 15251

27 D. FMC shall simultaneously send a copy of the transmittal  
28 letter and a copy of the check to:

1 Greg Pennington (H-7-4)  
2 U.S. Environmental Protection Agency  
3 75 Hawthorne Street  
4 San Francisco, CA 94105

5 E. In addition to any other remedies or sanctions available  
6 to EPA, if FMC fails or refuses to comply with any term or  
7 condition of this Order, FMC shall be subject to enforcement  
8 action pursuant to Section 122(h)(3) and Section 122(1) of  
9 CERCLA, 42 U.S.C. § 9622(h)(3) and 9622(1). FMC reserves its  
10 rights to defend against any alleged violation of this Order.

11 F. Subject to Paragraph IV.J of this Order, upon payment of  
12 the amount specified in Paragraph IV.B above in accordance with  
13 the schedule set forth therein, EPA covenants not to sue or take  
14 any other civil or administrative action against FMC under  
15 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement  
16 of response costs incurred at or in connection with the Site  
17 prior to the effective date of this Order. EPA agrees that by  
18 entering into and carrying out the terms of this Order, FMC will  
19 have resolved its liability to EPA for matters addressed by this  
20 settlement, as set forth in Section 113(f)(2) of CERCLA, 42  
21 U.S.C. § 9613(f)(2).

22 G. This Order shall not constitute any admission by FMC of  
23 liability or responsibility for any contamination of the Site.

24 H. This Order and payment of the amount specified in  
25 Paragraph IV.B above pursuant to this Order shall not constitute  
26 an admission by FMC and are without prejudice to FMC's ability to  
27 contend in other proceedings that the costs incurred by EPA and  
28 paid by FMC comprise recoverable governmental costs under

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1 Sections 104(a) and (107(a) of CERCLA, 42 U.S.C. §§ 9607(a) and  
2 9604(a).

3 I. FMC reserves any and all rights of contribution from any  
4 or all persons who are not parties to this Order, for all costs  
5 incurred by FMC pursuant to this Order and Administrative Order  
6 on Consent No. 86-12.

7 J. Nothing in this Order is intended to be nor shall it be  
8 construed as a release, covenant not to sue, or compromise for  
9 any claim or cause of action, administrative or judicial, civil  
10 or criminal, past or future, in law or in equity, which EPA may  
11 have against FMC for:

12 1. any liability as a result of failure to make the  
13 payment in accordance with Paragraph IV.B of this Order; or

14 2. any matters not expressly addressed by this  
15 settlement or in Administrative Order on Consent No. 86-12,  
16 including, without limitation, any liability for a) damages to  
17 natural resources, b) future response costs incurred after the  
18 effective date of this Order, or c) future enforcement action  
19 with respect to the Site pursuant to CERCLA and/or any other  
20 legal authority.

21 K. Nothing in this Order is intended to be nor shall be  
22 construed as a release or covenant not to sue for any claim or  
23 cause of action, administrative or judicial, civil or criminal,  
24 past or future, in law or in equity, which EPA may have against  
25 any person, firm, corporation or other entity not a signatory to  
26 this Order.

27 L. In consideration of EPA's covenant not to sue in  
28 Paragraph IV.F of this Order, FMC agrees not to assert any claims

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1 or causes of action against the United States or the Hazardous  
2 Substance Superfund arising out of response activities undertaken  
3 at, or relating in any way to, the Site prior to the effective  
4 date of this Order, or to seek any other costs, damages, or  
5 attorney's fees from the United States, its agencies, employees  
6 or contractors arising out of response actions undertaken at, or  
7 relating in any way to, the Site prior to the effective date of  
8 this Order. FMC waives any right it may have to seek  
9 reimbursement from EPA pursuant to Section 106(b)(2) of CERCLA,  
10 42 U.S.C. § 9606(b)(2), for any cost pertaining to response  
11 actions undertaken at, or relating in any way to, the Site prior  
12 to the effective date of this Order.

13 M. FMC agrees to indemnify and save and hold harmless the  
14 United States Government, its agencies, departments, agents,  
15 contractors and employees from any and all claims or causes of  
16 action arising from or on account of acts or omissions of FMC,  
17 its officers, employees, receivers, trustees, agents, successors,  
18 or assigns, in carrying out activities pursuant to Administrative  
19 Order on Consent No. 86-12 at the Site.

20 N. This Order shall be subject to a thirty (30) day public  
21 comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C.  
22 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may  
23 withdraw or withhold its consent to this Order if any comments  
24 received disclose facts or considerations which indicate that  
25 this Order is inappropriate, improper or inadequate. In the  
26 event that such consent is withdrawn or withheld, FMC may  
27 withdraw its consent.

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ADMINISTRATIVE CONSENT ORDER



1 O. The effective date of this Order shall be the date upon  
2 which FMC receives written notice from EPA that the public  
3 comment period pursuant to Paragraph IV.N of this Order has  
4 closed and that the comments received, if any, do not require  
5 modification or EPA withdrawal from this Order.

6 V. Termination of Administrative Order on Consent No. 86-12

7 A. EPA and FMC hereby mutually agree that Administrative  
8 Order on Consent, EPA Docket No. 86-12, shall be terminated upon  
9 payment in full by FMC of the costs described in Paragraphs IV.A,  
10 IV.B and IV.C above. EPA agrees that upon such payment, all  
11 terms of Administrative Order on Consent No. 86-12 shall be  
12 deemed complete to the satisfaction of EPA, as provided in  
13 Paragraph XXIV of Administrative Order on Consent No. 86-12.

14 B. The effective date of the termination of Administrative  
15 Order No. 86-12 shall be the date upon which EPA receives the  
16 final payment described in Paragraph IV.B of this Order.  
17 Following receipt of the final payment, EPA shall notify FMC in  
18 writing of the date of termination, but such notification shall  
19 not be a pre-condition to such termination.

20 C. Upon termination of Administrative Order No. 86-12, the  
21 terms and provisions of Administrative Order No. 86-12 shall be  
22 entirely superseded by the terms and conditions of this Order.

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2 IT IS SO AGREED.  
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4 FMC CORPORATION

5 By: Robert J. Fields

Robert J. Fields, Vice President  
Environment, Health, Safety & Toxicology  
FMC Corporation

AUGUST 24, 1995  
DATE

8  
9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

10 By: Keith Takata

Keith Takata, Acting Director  
Hazardous Waste Management Division  
United States Environmental  
Protection Agency Region IX

9-19-95  
DATE

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